

ATTACHMENT A Remarks

Applicants wish to thank the Examiners, Mr. Robert and Mr. Philogene for the courteous interview granted to Applicants' attorney on March 19, 2008. In accordance with the provisions of Rule 133(b), the reasons brought out at the interview as warranting favorable action are set forth below. All of the previous claims have been retained, amended as appropriate and as discussed below, and new dependent claims 68-74 have been added. Dependent claims 68-70 add additional features depending from amended claim 1 while claims 71-74 add additional features depending from amended claim 24.

By way of summary, the following claims are now present in this application, wherein each independent claim is listed separately, followed by its dependent claims:

Independent Claim	Dependent Claims
1	10-18, 68-70
19	20-23
24	25, 26, 71-74
30	31, 32, 39, 40
41	42-45
46	47
48	49-52
53	54-57
58	59-62
63	64-67

SPACER INDEPENDENT CLAIMS 19, 41, 46, 53, 58, and 63

At the interview it was noted that the secondary reference to Morrison does not meet the feature of the present invention whereby a spacer is constructed and/or recited relative to a method wherein the spacer concerns spacing apart upper and lower parts of an implant.

These claims have been amended as agreed at the interview or not amended where further amendments were not deemed necessary, in order to assure that each of them is patentable over the cited references.

NON-SPACER CLAIMS 1, 24, 30, and 48

At the interview there was some uncertainty as to the operation of the device shown in the Aebi et al U.S. Patent No. 6,712,825, and in particular, whether the description at the top of column 6 described the subject matter of this patent as possibly being an inserter. The Interview Summary record was drafted with this uncertainty.

After the interview, the Aebi et al reference was further reviewed and it became clear, as recited to the Examiner in a subsequent telephone discussion, that Aebi et al does not serve as an inserter. The primary function of the device shown in this patent is to distract or separate the vertebrae from each other, as shown in Figures 10 and 11 of this patent.

The four independent claims referred to above have been amended or left non-amended, such that each distinguishes over the applied references although such amendments or non-amendments have been made (or not made) based on the correct understanding of the Aebi et al, as described above, rather than the more ambiguous understanding of the Aebi et al patent at the interview. With these amendments, or as non-amended, it is believed that these claims are neither anticipated nor rendered obvious in view of the cited Aebi et al reference. Claim 1 has been amended to recite positive engagement between the arms and the recesses of the implant. Claim 24 has been amended to recite a keel structure with a recess, and the cooperation of the arms therewith.

It is respectfully submitted that this application is now in condition for allowance for all of the reasons discussed and agreed upon at the interview.

If for any reason the Examiner does not agree that this application is now in condition for allowance, it is respectfully requested, as mentioned at the interview, that the Examiner contact the undersigned in order to further advance the prosecution of this application.

END REMARKS